



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MAY 19 2014

Alissa Ko
President, California Young Democrats
915 L Street, #C109
Sacramento, CA 95814

RE: MUR 6413

Dear Ms. Ko:

This is in reference to the complaint you filed with the Federal Election Commission on October 28, 2010, concerning Taxpayer Network. After conducting an investigation in this matter, the Commission found that there was probable cause to believe that Taxpayer Network violated 2 U.S.C. §§ 434(f) and 441d, provisions of the Federal Election Campaign Act of 1971, as amended. On May 14, 2014, a conciliation agreement signed by the respondent was accepted by the Commission, thereby concluding the matter. Accordingly, the Commission closed the file in this matter on May 14, 2014.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). A copy of the agreement with Taxpayer Network is enclosed for your information. In addition, a copy of the Factual and Legal Analysis concerning Taxpayer Network is enclosed.

Sincerely,

A handwritten signature in dark ink, appearing to read "Mark Shonkwiler", followed by a horizontal line.

Mark Shonkwiler
Assistant General Counsel

Enc
Conciliation Agreement
Factual and Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of)
) MUR 6413
Taxpayer Network)
)

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint by Alissa Ko and California Young Democrats. The Federal Election Commission ("Commission") found probable cause to believe that Taxpayer Network ("Respondent") violated 2 U.S.C. §§ 434(f) and 441d.

NOW, THEREFORE, the Commission and the Respondent, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

- I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding.
- II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.
- III. Respondent enters voluntarily into this agreement with the Commission.
- IV. The pertinent facts in this matter are as follows:
 1. Taxpayer Network was a section 501(c)(4) non-profit corporation. It filed its Certificate of Dissolution with the California Secretary of State on January 9, 2014, and is now dissolved. It is not and never was registered with the Commission as a political committee.
 2. The Federal Election Campaign Act of 1971, as amended (the "Act"), requires that every person who makes aggregate disbursements of \$10,000 or more to produce and air electioneering communications must file disclosure reports with the Commission within 24 hours of making the communication. 2 U.S.C. § 434(f). The Act defines "electioneering

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communication" as a broadcast, cable, or satellite communication that refers to a clearly identified federal candidate, is publicly distributed within 60 days before a general election or 30 days before a primary election, and is targeted to the relevant electorate. 2 U.S.C. § 434(f)(3)(A); 11 C.F.R. § 100.29.

3. When a person who is not a candidate or authorized political committee makes a disbursement for an electioneering communication, such communication must include a disclaimer stating the name and permanent street address, telephone number or World Wide Web address of the person who paid for the communication, and state that the communication was not authorized by any candidate or candidate's committee. 2 U.S.C. § 441d(a); 11 C.F.R. § 110.11(b)(3). Further, disclaimers on television ads must include an audio statement as to who or what group is responsible for the content of the advertisement. 2 U.S.C. § 441d(d)(2); 11 C.F.R. § 110.11(c)(4)(i)-(ii).

4. During the 60 day period prior to the 2010 general election, Taxpayer Network aired two television advertisements in California that referred to and included photographs of one of the U.S. Senators from California, Barbara Boxer, who was a candidate for re-election at the time. Taxpayer Network spent \$192,185 to produce and air these advertisements ("Boxer Ads"), which constitute electioneering communications, but did not file any electioneering communication reports with the Commission.

5. The Boxer Ads both included a written disclaimer stating, "Paid for by Taxpayer Network," but did not include Taxpayer Network's permanent street address, its telephone number or World Wide Web address, a statement that the communication was not authorized by a candidate or candidate's committee, or an audio statement as to who or what group is responsible for the content of the advertisement.

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V. 1. Respondent violated 2 U.S.C. § 434(f) by failing to report the Boxer Ads to the Commission.

2. Respondent violated 2 U.S.C. § 441d by failing to fully comply with the disclaimer requirements for electioneering communications.

VI. 1. In ordinary circumstances, the Commission would seek a substantially higher civil penalty based on the violations outlined in this agreement. However, the Commission is taking into account the fact that Taxpayer Network is a dissolved corporation that represents that it has limited funds and no ability to raise additional funds. Respondent will pay a civil penalty to the Commission in the amount of \$5,000, pursuant to 2 U.S.C. § 437g(a)(5)(A).

2. Respondent will cease and desist from committing violations of 2 U.S.C. §§ 434(f) and 441d.

3. Respondent will file electioneering communication reports disclosing the activity referenced in Paragraph IV.4 within 30 days.

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondent shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

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X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained within this written agreement shall be enforceable.

FOR THE COMMISSION:

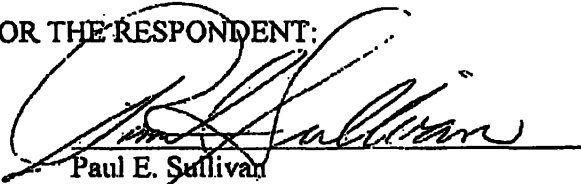
Lisa J. Stevenson
Deputy General Counsel for Law

BY: 

Daniel A. Petalas
Associate General Counsel
for Enforcement

5/16/14
Date

FOR THE RESPONDENT:


Paul E. Sullivan
Counsel to Taxpayer Network

5/2/14
Date

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Taxpayer Network

MUR: 6413

I. INTRODUCTION

This matter was generated by a complaint filed by California Young Democrats and Alisso Ko, President. See 2 U.S.C. § 437(g)(a)(1). Taxpayer Network did not respond to the complaint. The available information indicates there is reason to believe that Taxpayer Network, a 501(c)(4) non-profit corporation, violated 2 U.S.C. §§ 434(f) and 441d by failing to properly report, and include complete disclaimers on, electioneering communications.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Taxpayer Network's website indicates that it is a section 501(c)(4) non-profit corporation. See <http://www.taxpayernetwork.com>. It is not registered with the Commission, nor has it filed any reports with the Commission.

The Taxpayer Network website states that "its goal is to educate the public about the policies and policy-makers involved in issues of taxation, spending and regulation of the economy." See *id.* On a monthly basis from January to September 2010, Taxpayer Network purports to have recognized a single member of Congress as a "Taxpayer's Champion" for his or her work to limit taxes and reduce waste in Washington. *Id.* The Taxpayer Network website further states that it "uses television, radio, direct mail and the Internet to communicate its messages." *Id.* The website currently contains a single television ad which criticizes the voting record of California Senator Barbara Boxer, a candidate for U.S. Senate in 2010. *Id.* The

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website does not appear to have been updated since November 2010. As noted above, Taxpayer Network did not respond to the complaint.

Complainant alleges that one week before the 2010 general election, Taxpayer Network aired two television advertisements "across California" that refer to and include photographs of Senator Boxer. Complaint at 1. See <http://www.youtube.com/watch?v=Pot25ZJAjo4> and <http://www.youtube.com/watch?v=Pde4ljxbTCg>. The two Taxpayer Network ads, which are very similar, sharply criticize Boxer's voting record, but do not make any clear reference to, or expressly advocate her defeat in, the upcoming election.

Complainant contends that if Taxpayer Network spent \$10,000 for the communications, the Boxer Ads qualify as electioneering communications and, therefore, should have been reported to the Commission pursuant to 2 U.S.C. § 437g(a)(1). Complaint at 1-2; see also 11 C.F.R. § 100.29(b)(3) and (b)(5). Further, Complainant contends that while the Boxer Ads contained a printed disclaimer indicating that Taxpayer Network paid for the communications, the disclaimer did not include a street address, telephone number, or website address. Further, the Boxer Ads do not contain an audio or spoken message as to the person responsible for the content of the advertisements. *Id.* at 2-3. Thus, the complaint alleges that the advertisements do not satisfy the disclaimer requirements at 2 U.S.C. § 441d.

B. Legal Analysis

The Federal Election Campaign Act of 1971, as amended ("the Act"), requires that every person who makes aggregate disbursements of \$10,000 or more to produce and air "electioneering communications" file disclosure reports with the Commission. 2 U.S.C. § 434(f). The Act defines an "electioneering communication" as a broadcast, cable, or satellite communication that refers to a clearly identified federal candidate, is publicly distributed within

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sixty days before a general election or thirty days before a primary election, and is targeted to the relevant electorate. 2 U.S.C. § 434(f)(3)(A)(i); 11 C.F.R. § 100.29. In *Citizens United v. Federal Election Commission*, the Supreme Court struck down as unconstitutional the Act's prohibition on corporate financing of electioneering communications at 2 U.S.C. § 441b(b)(2), see 130 S.Ct. 876, 913 (2010), but upheld the Act's disclosure and disclaimer provisions applicable to electioneering communications at 2 U.S.C. §§ 434(f) and 441d, and 11 C.F.R. §§ 104.20 and 110.11. See *id.* at 915-916. Thus, persons making electioneering communications that cost, in the aggregate, more than \$10,000 must disclose such electioneering communications in reports filed with the Commission.

The available information indicates that the Boxer Ads, which included references to and photographs of Senator Boxer, were publicly distributed in the state of California, which was the relevant electorate for Senator Boxer, within a week of the general election. Complaint at 1-2. While the complaint lacks specific information regarding the cost of the Taxpayer Network communications, it alleges that the cost of running two different communications "for some time" on television stations across California would result in disbursements of the requisite \$10,000 threshold. See Complaint at 2-4. This allegation is un rebutted. Given the rapidly rising cost of television advertising in California prior to the 2010 election, there is a credible basis for the assertion that the Taxpayer Network may have spent more than the \$10,000 electioneering communication threshold for the Boxer Ads. See Meg James, *TV Still the Favored Medium for Political Ad Spending*, Los Angeles Times, October 29, 2010, <http://articles.latimes.com/2010/oct/29/business/la-fi-ct-political-ads-20101029>.

Accordingly, there is reason to believe that Taxpayer Network violated 2 U.S.C. § 434(f) by failing to report electioneering communications.

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The Act also requires that when any person who is not a candidate or authorized political committee makes a disbursement for an electioneering communication, such communication include a disclaimer stating who paid for the message, stating that it was not authorized by any candidate or candidate's committee, and listing the permanent street address, telephone number, or World Wide Web address of the person who paid for the communication. 2 U.S.C. § 441d(a); 11 C.F.R. § 110.11(b)(3). Further, for television ads, the disclaimer must include an audio statement as to who or what group is responsible for the content of the advertisement. 2 U.S.C. § 441d(d)(2); 11 C.F.R. § 110.11(c)(4)(i)-(ii).

While Taxpayer Network is identified in a written disclaimer that appears on the screen ("Paid for by Taxpayer Network"), that disclaimer does not reveal its street address, telephone number, or World Wide Web address. Further, the communications do not state that they were not authorized by any candidate or candidate's committee, do not list the required contact information of the person paying for the communications as required by 11 C.F.R. § 110.11(b)(3), and do not contain an audio statement regarding the person responsible for the content of the advertisements as required by 11 C.F.R. § 110.11(c)(4). *See, e.g.*, MUR 5889 (Republicans for Trauner) (Commission found reason to believe that § 441d was violated where a radio ad did not contain spoken message identifying responsible party). Thus, the advertisements do not fully comply with the disclaimer requirements for electioneering communications. Accordingly, there is reason to believe that Taxpayer Network violated 2 U.S.C. § 441d by failing to include sufficient disclaimers on its television advertisements.

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